

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 14140 of 2007(G)

PETITIONER:

P.K.MANOJ,
PANATHALACKAL HOUSE,
MELAMPARA P.O., MEENACHIL TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.M.C.CHERIAN

RESPONDENTS:

1. RAJAN,
NARIKUZHIYIL HOUSE,
NARIYANGANAM P.O., KALAIKANDAM DESOM,
THALAPPULAM VILLAGE, KOTTAYAM DISTRICT.
2. THE ASST. EXCISE COMMISSIONER,
KOTTAYAM.
3. THE DY. SUPDT. OF POLICE,
PALA.
4. THE SUB INSPECTOR OF POLICE,
ERATTUPETTA.
5. STATE OF KERALA,
REP. BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT,
THIRUVANANTHAPURAM.
- ADDL. 6. THRESIAMMA JOY, W/O.JOY,
PAMPANAL HOUSE, PRESIDENT,
USHAS KUDUMBASREE, WARD I, NARIAMGANAM P.O.,
THALAPKPALAM PANCHAYAT, KOTTAYAM DISTRICT.
- " 7. ALICE KURIACHEN, MANAYANICKEL, SECRETARY,
USHAS KUDUMBASREE, -DO- -DO-
- " 8. JISHA GEORGE, ERUVELIKUNNEL,
SECRETARY, AISWARYA KUDUMBASREE,
WARD I, THALAPPALAM PANCHAYAT, NARIYAMGANAM P.O.

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- " 9. CHACKO VARGHESE, T.P.111/29-C, ILLICKEL MARIYIL,
NARIAMGANAM P.O., KOTTAYAM DISTRICT.
- " 10. P.J.MATHEW, T.P.111/31, PAMPANAL,
NARIYAMGANAM P.O.
- " 11. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.

(ADDL.R6 TO R10 ARE IMPEADED AS PER ORDER DTD. 25/5/2007
IN I.A.NO.6243/2007.)

(ADDL. R11 IS SUO MOTU IMPEADED AS PER JUDGMENT DATED 6/6/2007
IN W.P. (C).NO.14140/2007)

ADDL. R6 TO R10 BY ADV. SRI.K.G.ANIL BABU

R2 TO R5 BY GOVT.PLEADER SRI P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER'S EXTS:

- EXT.P1 TRUE COPY OF COMMUNICATION NO.K5-5400/06 DTD. 1/4/2007
OF THE 2ND RESPONDENT ISSUED BY THE 2ND RESPONDENT.
- EXT.P2 TRUE COPY OF THE COMPLAINT SUBMITTED BEFORE THE 4TH
RESPONDENT.

RESPONDENTS' EXTS:

- EXT.R1A TRUE COPY OF THE NEWS PUBLISHED IN MALAYALA
MANORAMA DAILY DATED 28/4/2007.
- EXT.R1B TRUE COPY OF THE NEWS PUBLISHED IN MANGALAM DAILY
DATED 28/4/2007.
- EXT.R6A TRUE COOP7Y OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER AND OTHERS BEFORE THE 3RD RESPONDENT.
- EXT.R6B TRUE COPY OF THE NEWS PUBLISHED IN MALAYALA MANORAMA
DAILY DATED 28/4/2007.
- EXT.R6C TRUE COPY OF THE NEWS PUBLISHED IN MANGALAM DAILY
DATD 28/4/2007.
- EXT.R6D TRUE COPY OF THE CERTIFICATE ISSUED BY THE CHILD
DEVELOPMENT PROJECT OFFICER, ERNAKULAM.

P.R.RAMAN & K. HEMA, JJ.

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Dated this the 6th day of June, 2007

JUDGMENT

Raman, J.

Pursuant to the order dated 29th May, 2007 the Assistant Excise Commissioner filed a detailed report after measuring the distance. As per the report, it is found that the toddy shop is situated surrounded by the the residence of the respondents and one Anganvadi is also in the immediate vicinity of the shop and there is some substance in the objections raised by the respondents. It is reported that the toddy shop is licenced in the present building after satisfying all the norms and conditions for licencing this toddy shop and hence the running of the toddy shop in the said building is not offending any rule.

2. The learned counsel appearing for the additional respondents 6 to 10 would submit that

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during the course of hearing by the Assistant Excise Commissioner one of the building owners has given his written consent to give the said building on rental basis for running the toddy shop, which would be a convenient place from the point of view of the public. As such the running of a shop in the said building may not cause any obstacles to the local public and to function the Anganvadi peacefully.

3. Learned Counsel, Sri Cherian, appearing on behalf of the petitioner on the other hand would submit that this Anganvadi itself was formed only recently and there is no prohibition to run a toddy shop and the distance rule will not apply to such Anganvadi. He would further submit that there cannot be any legal objection in carrying on the business.

4. The learned Government Pleader appearing on behalf of the State would submit that the matter will be looked into by the Commissioner of

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Excise, who is the appropriate authority under Rule 11 to consider whether any shifting of the present toddy shop to any other place is necessary in the larger interest of the public.

5. Having heard the parties we dispose of the writ petition as follows:

So long as the petitioner wants to carry on the business in the premises as noticed in the licence issued to him as evidenced by Ext.P2 and in so far as there are no prohibitory orders issued against the running of the toddy shop in the said premises by any statutory authorities, the petitioner is entitled to carry on his business in the said premises. Therefore, if there is any physical obstruction caused by any of the party respondents or their associates and if a complaint is made by the petitioner to the Sub Inspector of Police, Erattupetta, necessary protection shall be given to the petitioner by removal of physical obstruction, if any. This

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however will not prevent the respondents from staging a Dharna in a peaceful manner as permitted by law. The Dharna will be conducted beyond the distance of 50 mts. excluding the residential premises in between. The Commissioner of Excise, Kottayam, suo motu impleaded, who shall look into the complaint made by the additional respondents 6 to 10 and after calling for the records from the Assistant Excise Commissioner and after hearing the parties, shall dispose of the matter in accordance with law, within a period of two weeks. It is open to him to grant relief as contemplated under Rule 11 including shifting, if it is feasible.

P.R.RAMAN,
Judge.

K. HEMA,
Judge.

kcv.

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